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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 CENTER FOR BIOLOGICAL DIVERSITY,	)	
14 KENTUCKY ENVIRONMENTAL	)	Case No. C08-1240 EMC
FOUNDATION, and SIERRA CLUB,	)	
15 Plaintiffs,	)	
16 v.	)	
17 RURAL UTILITIES SERVICE, a federal agency	)	
within the United States Department of Agriculture,	)	
18 Defendant.	)	

20 **DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT**

21 Pursuant to Rule 8 of the Federal Rules of Civil Procedure, defendant United States Department  
22 of Agriculture, Rural Utilities Service (“RUS,” or “Defendant”), by and through its undersigned counsel,  
23 hereby submits the following Answer to the allegations in Plaintiffs’ Complaint and Request for  
24 Declaratory and Injunctive Relief (“Complaint”). The paragraph numbers in this Answer correspond to  
25 the paragraph numbers in Plaintiffs’ Complaint.

26 1. The allegations in paragraph 1 are Plaintiffs’ characterization of their case and conclusions  
27 of law, to which no response is required.  
28

1           2.       The allegations in paragraph 2 are Plaintiffs' characterization of their case and conclusions  
2 of law, to which no response is required.

3           3.       Defendant denies the allegations in paragraph 3.

4           4.       The allegations in paragraph 4 are Plaintiffs' characterization of their case and conclusions  
5 of law, to which no response is required. Defendant denies that the East Kentucky Power Cooperative  
6 Environmental Assessment for the Proposed Smith Station CT Units 9 & 10 and the Smith-West Garrard  
7 Electric Transmission Project ("June 2007 EA") is inadequate or that Defendant violated NEPA.

8           5.       The allegations in paragraph 5 are Plaintiffs' characterization of the relief they seek, to  
9 which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are  
10 entitled to the relief they request, or to any relief whatsoever.

11          6.       The allegations in paragraph 6 are conclusions of law, to which no response is required.  
12 To the extent a response is required, the allegations in paragraph 6 are denied.

13          7.       The allegations in paragraph 7 are conclusions of law, to which no response is required.

14          8.       Defendant is without knowledge or information sufficient to form a belief as to the truth  
15 of the allegations in the first and third sentences of paragraph 8 and therefore denies the allegations  
16 therein. The allegations in paragraph 8 are conclusions of law, to which no response is required.

17          9.       The allegations in paragraph 9 are conclusions of law, to which no response is required.  
18 To the extent a response is required, the allegations in paragraph 9 are denied.

19          10.      Whether this action is properly assigned to the San Francisco Division of this Court is a  
20 conclusion of law to which no response is required. Defendant is without knowledge or information  
21 sufficient to form a belief as to the truth of the remaining allegations in paragraph 10 and therefore denies  
22 those remaining allegations.

23          11.      Defendant is without knowledge or information sufficient to form a belief as to the truth  
24 of the allegations in paragraph 11 and therefore denies the allegations therein.

25          12.      In response to the allegations in fourth, sixth, and seventh sentences of paragraph 12,  
26 Defendant denies that the June 2007 EA was legally or scientifically insufficient or that the June 2007  
27 EA violated NEPA. In response to the allegations in the fifth sentence of paragraph 12, Defendant denies  
28 that the two new Smith Station combustion turbine electric generating units, two new electric switching

1 stations, or the 36-mile Smith-West Garrard 345 kV electric transmission line would degrade air quality.  
2 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations  
3 in the remainder of paragraph 12 and therefore denies the allegations therein.

4 13. In response to the allegations in sixth, eighth, and ninth sentences of paragraph 13,  
5 Defendant denies that the June 2007 EA was legally or scientifically insufficient or that the June 2007  
6 EA violated NEPA. In response to the allegations in the seventh sentence of paragraph 13, Defendant  
7 denies that the two new Smith Station combustion turbine electric generating units, two new electric  
8 switching stations, or the 36-mile Smith-West Garrard 345 kV electric transmission line would degrade  
9 air quality. Defendant is without knowledge or information sufficient to form a belief as to the truth of  
10 the allegations in the remainder of paragraph 13 and therefore denies the allegations therein.

11 14. Defendant admits the allegations in paragraph 14.

12 15. Defendant admits the allegations in paragraph 15.

13 16. In response to the allegations in paragraph 16, Defendant admits that in June 2007  
14 Defendant invited comments on the June 2007 EA. The remainder of the allegations in paragraph 16 are  
15 Plaintiffs' characterization of the June 2007 EA, which speaks for itself and is the best evidence of its  
16 contents.

17 17. Defendant admits the allegations in paragraph 17.

18 18. Defendant admits the allegations in paragraph 18.

19 19. Defendant admits the allegations in paragraph 19 except for the characterization that  
20 Defendant "proposed assisting" East Kentucky Power Cooperative ("East Kentucky"), which Defendant  
21 denies. In response to an application by East Kentucky for proposed financing, Defendant is considering  
22 whether to provide financial assistance in the form of loans or loan guarantees for the activities that were  
23 the subject of the June 2007 EA and a finding of no significant impact issued on September 19, 2007  
24 ("September 2007 FONSI").

25 20. Defendant admits the allegations in paragraph 20.

26 21. The allegations in paragraph 21 are Plaintiffs' characterization of the June 2007 EA and  
27 a separate environmental impact statement ("EIS"), which speak for themselves and are the best evidence  
28 of their contents.

1           22.     The allegations in paragraph 22 are Plaintiffs' characterization of the June 2007 EA, which  
2 speaks for itself and is the best evidence of its contents. To the extent a response is required, Defendant  
3 denies the allegations in paragraph 22.

4           23.     The allegations in paragraph 23 are Plaintiffs' characterization of Eastern Kentucky Power  
5 Cooperative's May 17, 2006 System Impact Study for the Generation Interconnection Requests #30-33,  
6 J.K. Smith Combustion Turbines #8-12 and CFS Unit #1 Project in Clark County, Kentucky ("System  
7 Impact Study"), which speaks for itself and is the best evidence of its contents.

8           24.     The allegations in paragraph 23 are Plaintiffs' characterization of the System Impact  
9 Study, which speaks for itself and is the best evidence of its contents.

10          25.     Defendant denies the allegations in paragraph 25, except insofar as Defendant admits that  
11 as of June 26, 2007, the construction of the proposed two combustion turbine electric generating units,  
12 two switching stations, and transmission line was tentatively scheduled to begin in the fall of 2007, with  
13 an estimated duration of construction of two years. Defendant states that the construction schedule has  
14 since been moved back.

15          26.     Defendant admits the allegations in paragraph 26.

16          27.     In response to the allegations in paragraph 27, Defendant admits that on September 19,  
17 2007, RUS issued a notice of FONSI for the request for financing assistance to East Kentucky for the  
18 construction of two new Smith Station combustion turbine electric generating units, two new electric  
19 switching stations, and a 36-mile Smith-West Garrard 345 kV electric transmission line located in Clark,  
20 Madison, and Garrard Counties, Kentucky. The remaining allegations in paragraph 27 are Plaintiffs'  
21 characterization of the September 2007 FONSI, which speaks for itself and is the best evidence of its  
22 contents.

23          28.     Defendant admits the allegations in paragraph 28.

24          29.     Defendant admits the allegations in paragraph 29.

25          30.     Defendant admits the allegations in paragraph 30.

26          31.     Defendant denies the allegations in paragraph 31 except insofar as Defendant admits that  
27 electricity generated by the new coal-fired generating unit would be transmitted along the transmission  
28 line project considered by the EA.

32. Defendant denies the allegations in paragraph 32.

33. Defendant admits the allegations in paragraph 33 except that Defendant denies that currently there are multiple coal-fired generating units proposed for the Smith Plant expansion.

34. Defendant incorporates by references its responses to paragraphs 1 through 33.

35-41. The allegations in paragraphs 35 through 41 are conclusions of law to which no response is required. To the extent a response is required, Defendant denies that Defendant violated NEPA or the APA, or that Plaintiffs are entitled to attorneys' fees.

42. Defendant incorporates by references its responses to paragraphs 1 through 33.

43-49. The allegations in paragraphs 43 through 49 are conclusions of law to which no response is required. To the extent a response is required, Defendant denies that Defendant violated NEPA or the APA, or that Plaintiffs are entitled to attorneys' fees.

50. Defendant incorporates by references its responses to paragraphs 1 through 33.

51-54. The allegations in paragraphs 51 through 54 are conclusions of law to which no response is required. To the extent a response is required, Defendant denies that Defendant violated NEPA or the APA, or that Plaintiffs are entitled to attorneys' fees.

The remaining allegations on page 9 of Plaintiffs' Complaint, which come under the heading of "RELIEF REQUESTED," are Plaintiffs' characterization of the relief they seek, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the relief they request, or to any relief whatsoever.

WHEREFORE, Defendant denies each and every allegation in Plaintiffs' Complaint to which Defendant has not already responded. Defendant requests that the Court deny Plaintiffs the relief they request, dismiss Plaintiffs' Complaint with prejudice, and enter judgment for Defendant.

Dated: May 2, 2008

Respectfully submitted,

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Environment and Natural Resources Division

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2008, I electronically filed the foregoing DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Dated: May 2, 2008

/s/ Brian C. Toth  
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